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# Asbestos lawsuit reaches high court

HELENA (AP) — The Montana Supreme Court will hear arguments later this month in a lawsuit accusing the state of withholding information about asbestos contamination in the Libby area for decades, while hundreds of people became ill or died.

Nine Libby residents diagnosed with asbestos-related health problems contend the state knew as early as 1956 of dangers posed by exposure to asbestos dust from a nearby vermiculite mine. The plaintiffs contend the state was negligent in failing to warn mine workers and their families of the risks.

The case, to be argued by lawyers June 26, appeals an August 2001 decision by District Judge Jeffrey Sherlock of Helena. He threw out the suit after concluding the state had no legal obligation to warn Libby residents of the danger.

In their appeal, the nine residents contend the state stood by while a "human disaster of epic proportions unfolded in Libby."

In its response, the state argued that laws and an attorney general's opinion demanded the government keep secret the information it gathered in a series of seven studies over 18 years.

The state had no obligation

*"Harm was not only foreseeable, there was an ongoing health emergency in Libby, of which the state was on notice with each new death certificate showing death by asbestos disease."*

to warn Libby residents, and no power to set standards to asbestos exposure or regulate mine safety, it said. Also, government was immune from suits for actions before the new Montana Constitution eliminated that protection in 1973, state lawyers said.

Libby was once home to a vermiculite mine W.R. Grace & Co. operated from 1963 until it closed in 1990.

Asbestos in the vermiculite ore has been blamed for hundreds of illnesses and at least 200 deaths. The Environmental Protection Agency has been cleaning up the mine site and other contaminated areas in the town since 1999. Libby was declared a Superfund site last October.

The people involved in the Supreme Court appeal are eight

former mine workers and the wife of one miner, all of whom have asbestos-related diseases. The outcome of their appeal may affect similar claims of other Libby residents.

In their written arguments, the miners said Montana's industrial hygiene law required the state to investigate potentially hazardous working conditions and disseminate the information it gathered.

Studies conducted by the state in 1956, 1958, 1962, 1963, 1964, 1967 and 1974 and submitted to Grace and the mine's previous owner, Zonolite Corp., warned of hazardous asbestos dust and recommended steps to control the problem, the appeal said.

Through death certificates, the state also knew of instances

of deaths caused by the asbestos exposure, it said.

"Harm was not only foreseeable, there was an ongoing health emergency in Libby, of which the state was on notice with each new death certificate showing death by asbestos disease," the appeal says.

Once the state knew of the asbestos danger, the plaintiffs argue, it had a legal responsibility to alert those in its path.

The state, however, contends the law imposes a duty on employers — not the state — to ensure a safe workplace. Nothing transfers that obligation to the state simply because government conducted limited inspections of the workplace, it said.

The state's lawyers said a 1942 attorney general decision required all records regarding occupational diseases to be confidential. Although the miners maintain the opinion was improper, state agencies were bound to follow it, the state said.

There is no law that expressly mandates the state warn mine workers about the danger from asbestos dust, and a general law about disseminating information to control disease is not enough to create a legal obligation on government, the state said.

## — court papers